

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Appellee,)	2 CA-CR 2008-0388
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ROMAN ALFONSO LOPEZ-VALLE,)	Rule 111, Rules of
)	the Supreme Court
Appellant.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20073383

Honorable Michael J. Cruikshank, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
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B R A M M E R, Judge.

¶ 1 Appellant Roman Alfonso Lopez-Valle appeals from his convictions for manslaughter, attempted manslaughter by sudden quarrel or heat of passion, two counts of aggravated assault, leaving the scene of an accident, and criminal damage. He asserts insufficient evidence supported his conviction for attempted manslaughter and the indictment was duplicitous as to the criminal damage count. Finding no reversible error, we affirm.

Background

¶ 2 We view the facts and all reasonable inferences therefrom in the light most favorable to upholding the verdict. *See State v. Tucker*, 205 Ariz. 157, n.1, 68 P.3d 110, 113 n.1 (2003). In August 2007, Lopez-Valle drove away from a Tucson restaurant where he had been drinking beer and eating. At a stoplight, he became involved in a physical fight with the passenger in a car that had stopped next to him at the light. Both men returned to their vehicles, and Lopez-Valle pursued the other car, a Honda, in his Ford F-150 truck. During the chase, Lopez-Valle struck the Honda without slowing down, causing it to crash into a wall. The driver of the Honda died in the crash, and the passenger sustained “obvious trauma.” Lopez-Valle left the accident scene and drove home.

¶ 3 The state charged Lopez-Valle with first-degree murder, attempted first-degree murder, two counts of aggravated assault, leaving the scene of an accident, and criminal damage. After a jury trial, he was convicted of the lesser-included offenses of manslaughter and attempted manslaughter by sudden quarrel or heat of passion, as well as the remaining

counts charged. The trial court imposed a combination of mitigated, partially mitigated, and presumptive terms totaling 17.5 years' imprisonment. This appeal followed.

Discussion

¶ 4 Lopez-Valle first contends the state did not present sufficient evidence to sustain his conviction for attempted manslaughter. He maintains the evidence was insufficient “to establish the required intent necessary for [his] conviction of attempted manslaughter” because there was no evidence he had either attempted or intended to kill the passenger.

¶ 5 A conviction must be supported by “substantial evidence,” Rule 20(a), Ariz. R. Crim. P., which is “such proof that ‘reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.’” *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990), quoting *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). We will reverse a conviction for insufficient evidence “only where there is a complete absence of probative facts to support the conviction.” *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996), quoting *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976). Evidence sufficient to support a conviction may be direct or circumstantial. *State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005).

¶ 6 A person commits an attempted offense when he or she, while “acting with the kind of culpability otherwise required for commission of an offense, . . . [i]ntentionally does

or omits to do anything which, under the circumstances as such person believes them to be, is any step in a course of conduct planned to culminate in commission of an offense.” A.R.S. § 13-1001(A)(2). A person commits manslaughter if without premeditation and “upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim,” that person “intentionally causes the death of another person” or causes such death while “[k]nowing that [his or her] conduct will cause death or serious physical injury.” A.R.S. §§ 13-1103(A)(2), 13-1104(A).

¶ 7 Lopez-Valle acknowledges this court’s decision in *State v. Barnes*, 162 Ariz. 92, 93, 781 P.2d 69, 70 (App. 1989), in which we decided that “conviction for attempted heat of passion or sudden quarrel manslaughter based on . . . intentional, knowing conduct is . . . not prohibited” when the defendant’s conduct was intentional, even if the defendant did not intend for the victim to die. But, he maintains, “[i]n [his] case, there was no evidence . . . [he] attempted to or even intended to kill [the victim]. There was no intentional conduct on [his] part.” As we ruled in *Barnes*, however, no intent to kill the victim was required. 162 Ariz. at 93, 781 P.2d at 70. Rather, Lopez-Valle need only have intentionally engaged in conduct he knew would lead to death or serious injury. *Id.*; *see also* §§ 13-1001(A)(2), 13-1103(A)(2), 13-1104(A). The state presented sufficient evidence to support that proposition. *See Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d at 875.

¶ 8 A witness who had observed the fight on the street between Lopez-Valle and the passenger of the Honda testified the passenger had attempted to get back into the Honda,

Lopez-Valle had “tried to pull him back out,” and “it [had been] a little bit of a struggle for him to get back in the car.” Another witness testified he had “watch[ed] the little car . . . speed away” and had seen Lopez-Valle’s truck “accelerating and catching the car very quickly.” He stated the truck had been “going after the car” and had “never slowed down. Never hit the brakes. It hit the car. Straight from the rear end.” He testified he had been traveling at thirty-five or forty miles per hour and Lopez-Valle had passed his car “at a very high rate of speed.” That witness’s wife, who had been with him in the car, testified that Lopez-Valle had been “going . . . fast past us and he seemed to line himself right up with that car, and I never saw brake lights. It—he hit very hard.”

¶ 9 An investigating detective testified there was no physical evidence to show that either car had used its brakes before the crash. The detective also estimated the vehicles had been traveling at 59.9 to 62.4 miles per hour when the crash occurred. Taken together, this evidence was sufficient to support a finding that Lopez-Valle, angry after the fight in the street, had intended to engage in conduct that would result in serious injury or death.

¶ 10 In support of a contrary conclusion, Lopez-Valle relies on his own testimony that he had followed the Honda to get its license plate number and then had been unable to stop when the Honda slowed down shortly before he collided with it. But the jury was free to disregard his testimony or give it less weight than that of other witnesses. *State v. Pieck*, 111 Ariz. 318, 320, 529 P.2d 217, 219 (1974). Evidence is not insufficient to support a conviction simply because it is contradicted. *State v. Walker*, 181 Ariz. 475, 478-79, 891

P.2d 942, 945-46 (App. 1995). In sum, there was sufficient evidence to sustain Lopez-Valle's conviction for attempted manslaughter.

¶ 11 Lopez-Valle also maintains that count six of the indictment—the criminal damage charge—was duplicitous. As the state points out, however, he did not raise this objection below and therefore forfeited the argument absent fundamental error. *See State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005). Because Lopez-Valle does not argue the error was fundamental and because we find no such error in any event, the issue is waived. *See State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008); *State v. Fernandez*, 216 Ariz. 545, ¶ 32, 169 P.3d 641, 650 (App. 2007) (court will not ignore fundamental error if it sees it); *see also* Ariz. R. Crim. P. 31.13(c)(1)(vi).

Disposition

¶ 12 Lopez-Valle's convictions and sentences are affirmed.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge